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Article 9: Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

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revesting in the distributor. Therefore, it is necessary to apply, as this court did, Section 2-403, conferring full rights on Williams as though the wholesaler had good title.

Another noteworthy facet of the present case is the court's application of the cited section referring to "buyer in ordinary course" to a transaction between two dealers rather than to the usual retail sale.]

ARTICLE 9: SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

SECTION 9-104. Transactions Excluded From Article

This Article does not apply . . .

(d) to a transfer of a claim for wages, salary or other compensation of an employee;

Opinion of the Justices, 173 A.2d 578 (N.H. 1961).

In answering a question propounded to them by the Governor and Executive Council, the Justices of the Supreme Court of New Hampshire opined that the State was not bound to honor assignments of wages of state employees or officials, and that the Governor and Council could not honor such wage assignments in their discretion.

The conclusion was reached on the basis that there is no existing legislation in New Hampshire authorizing such assignments. The court noted as significant that Section 9-104(d) excludes such assignments from the Code and leaves the solution open to local regulation.

SECTION 9-110. Sufficiency of Description

For the purpose of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

Attorney General's Opinion, No. 60-425, Ky., May 31, 1960.

See Section 9-402(1) *infra*, for a discussion of this opinion.

SECTION 9-203. Enforceability of Secured Interest; Proceeds, Formal Requisites

(1) . . . a security interest is not enforceable against the debtor or third parties unless . . .

(b) the debtor has signed a security agreement which contains a description of the collateral

Mertz Estate, 24 D.&C.2d 587 (Pa. 1961).

Decedent in his lifetime executed a judgment note and delivered a certificate of title to a truck with a lien noted thereon in favor of the judgment creditor. Petitioner on behalf of the estate sought to recover the certificate of title on the ground that no written security agreement had been executed as required by the cited section. **HELD:** Petition

(Where a cited case interprets only a portion of a Code section only that portion is set out.)

dismissed. The notation of the lien upon the certificate of title, pursuant to the vehicle Code of Pennsylvania, is a method of creating liens without transferring possession. It is also a sufficient writing to satisfy this Statute of Frauds section of the Code. Under these circumstances it is inequitable to deny that a security interest exists.

[Annotator's Comment: There is no indication from the opinion that the debtor here signed his name to the lien noted upon the certificate of title. Although the court advances equitable grounds for its decision, such grounds do not justify the avoidance of the specific requirement of the Code that the security agreement be signed.]

SECTION 9-307. Protection of Buyers of Goods

(1) A buyer in ordinary course of business . . . takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

Taylor Motor Rental, Inc. v. Associates Discount Corp., Inc., 173 A.2d 688 (Pa. 1961).

[N.B. This case was decided under the 1953 draft of the Code, Section 9-307 of which read: "In the case of inventory . . . a buyer in ordinary course of business takes free of a security interest even though perfected and even though the buyer knows of the terms of the security agreement."]

See Section 1-201 *supra*, for a discussion of this case.

SECTION 9-402. Formal Requisites of Financing Statement; Amendments

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. . . . When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned.

Attorney General's Opinion, No. 60-695, Ky., July 18, 1960.

An instrument covering tobacco which describes it as "grown on the farm of C. H. Jones in West Allen County near Claire" is a sufficient description of the real estate involved. The Attorney General relied upon Kentucky case law in concluding that "description" means a general description of the property sufficient for identification.

[Annotator's Comment: By seemingly relying only upon Kentucky case law, the Attorney General has neglected to use the express interpretative assistance provided by the Code in Section 9-110. Section 9-110 provides that a "description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies

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what is described." Under this liberal test (far removed from the "serial number" test, according to the Comment), the same result would be reached in the Attorney General's example.]

Attorney General's Opinion, No. 60-425, Ky., May 31, 1960.

The Code would indicate that it is necessary to file an individual financing statement for each trust receipt in order to perfect a security interest in the goods covered. However, it is not necessary, although it may be an additional precautionary measure, to file in addition a general statement covering all the goods involved.

[Annotator's Comment: Nothing in the Code warrants the conclusion that a financing statement must be filed for each trust receipt. Comment 2 to Section 9-402 points out that the Code is adopting the simplified "notice filing" system of the Uniform Trust Receipts Act, under which, in a continuing arrangement, a general statement of intent to engage in trust receipt financing in regard to the inventory of a particular place of business (or a similar reasonable identification) is sufficient. The Code is not regressing to the more stringent requirements of earlier chattel mortgage and conditional sales acts.]

SECTION 9-403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. . . .

Attorney General's Opinion, No. 60-695, Ky., July 18, 1960.

The county clerk or filing officer must determine whether the financing statement contains substantially the information required by the Code, but he "has no authority to go behind the instrument" in making his determination. However, there is no penalty imposed on the clerk for any failure to make such a determination because the Code does not impose a penalty.

SECTION 9-504. Secured Party's Right to Dispose of Collateral after Default; Effect of Disposition

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral. . . .

(3) Disposition of the collateral may be by public or private proceedings . . . and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable.

Family Finance Corp. v. Scott, 24 D.&C.2d 587 (Pa. 1961).

For a discussion of this case see *infra*, Section 9-507.

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SECTION 9-507. Secured Party's Liability for Failure to Comply With This Part

(2) . . . If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. . . .

Family Finance Corp. v. Scott, 24 D.&C.2d 587 (Pa. 1961).

Debtor was entitled to have a deficiency judgment opened where a repossessed automobile was sold for less than one-half of the recognized wholesale value as quoted by the "Redbook," a national publication circulated among car dealers. The court held that although speed is essential in transactions of this nature, nevertheless where sufficient facts are alleged indicating that bids received by the secured party did not give any consideration to the condition of the collateral and there was a wide discrepancy between at least one recognized value in the trade (the "Redbook" quotation) and the resale price, the debtor should be given the opportunity to have the transaction examined to determine the reasonable value of the collateral at the time of resale.

[Annotator's Comment: A prior Pennsylvania decision stated that there is no recognized market for used cars and that prices quoted in the "Redbook" are not sell and bid prices, but are merely for the convenience of the dealer.² The instant forum has made a more realistic appraisal of the situation. The court recognized that the "Redbook" is not conclusive evidence of the current price obtainable but is a determining factor in fixing the reasonable value of motor vehicle collateral. In view of the fact that most banks, finance companies and car dealers refer to the "Redbook" as a matter of course when transacting installment loans or in determining trade-in-allowances, the court was correct in using the publication as a practical yardstick in deciding whether the secured party has resold in a "commercially reasonable manner."

Since one of the major criticisms of the secured transactions part of the Code has been directed at the use of the rather vague standard of "commercial reasonableness," the decision brings to the Code a much needed narrowing of the scope of this standard. Further, when one considers that the Code's liberalizing provisions have all but abandoned prior restrictions placed on the secured party's right of resale,³ the decision takes on added significance by establishing at least one guidepost as a protective device for defaulting buyers of collateral sold in unrecognized markets.⁴]

² *Alliance Discount Corp. v. Shaw*, 171 A.2d 548 (Pa. 1961). See 3 B.C. Ind. & Com. L. Rev. 45 et seq. (1961) for the annotation of this case.

³ For a general discussion concerning Article 9, see Gilmore, *The Secured Transactions Article of the Commercial Code*, 16 Law & Contemp. Prob. 27 (1951).

⁴ For an interesting comment on remedies on default under Article 9 of the Code, see Comment, 39 Marq. L. Rev. 246 (1950).

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UNIFORM COMMERCIAL CODE ANNOTATIONS

[*N.B.* State variations: Mass. UCC Section 9-507(2) amended second sentence by adding after "secured party" the words "in good faith for the purpose of avoiding or reducing loss and of effective realization." This amendment appears to be mere surplusage as the principal limitation on the secured party's right to dispose of collateral is the requirement that he proceed in good faith; Section 1-203 sets forth the good faith principle which runs throughout the Code and which is required in the performance and enforcement of all agreements and duties.]

(Where a cited case interprets only a portion of a Code section only that portion is set out.)